

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ANTHONY COLEMAN,
Plaintiff
vs.
THE BANK OF NEW YORK MELLON FKA
BANK OF NEW YORK AS TRUSTEE FOR
AMERICAN HOME MORTGAGE
INVESTMENT TRUST 2004-4 MORTGAGE-
BACKED NOTES, SERIES 2004-4; *et al.*,
Defendants.)
Case No. 2:16-cv-01339-RFB-GWF
ORDER

This matter is before the Court on Defendants Mortgage Electronic Registration Systems, Inc., Ocwen Loan Servicing LLC, and the Bank of New York Mellon's Motion to Strike Plaintiff's Verified First Amended Complaint (ECF No. 16), filed on November 7, 2016. Plaintiff filed his Opposition (ECF No. 18) on November 21, 2016.

Plaintiff filed his Complaint (ECF No. 1) on June 15, 2016. Defendants filed their Motion to Dismiss (ECF No. 8) on September 26, 2016. Plaintiff filed his Verified First Amended Complaint (ECF No. 13) on October 18, 2016. Defendants request that the Court strike Plaintiff's Verified First Amended Complaint as untimely pursuant to Fed. R. Civ. Pro. 15 and as impermissible and redundant pursuant to Fed. R. Civ. Pro. 12(f).

Under Rule 12(f) of the Federal Rules of Civil Procedure, the Court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. Fed. R. Civ. P. 12(f). The essential function of a Rule 12(f) motion is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial. *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th cir. 1993), *rev'd on other grounds*, 510 U.S. 517, 114 S. Ct. 1023. Striking material pursuant to Rule 12(f) is considered a “drastic remedy”

1 that is "generally disfavored." *Nevada Fair Housing Center, Inc. V. Clark County*, 565 F. Supp.2d
2 1178 (D. Nev. 2008). Whether to grant a motion to strike lies within the sound discretion of the
3 district court. *Id.*

4 Fed. R. Civ. Pro. 15(a)(1) states:

5 A party may amend its pleading once as a matter of course within:

6 (A) 21 days after serving it, or

7 (B) if the pleading is one to which a responsive pleading is required, 21 days after
8 service of a responsive pleading or 21 days after service of a motion under Rule
12(b), (e), or (f), whichever is earlier.

9 In all other cases, a party may amend his pleading only with the opposing party's written
10 consent or the court's leave. Fed. R. Civ. Pro. 15(a)(2). Plaintiff did not comply with this
11 procedure when he filed his First Amended Complaint because Plaintiff did not file his amended
12 pleading within 21 days of service of Defendants' Motion to Dismiss. Defendants filed their
13 Motion to Dismiss on September 26, 2016, which gave Plaintiff until October 17, 2016 to amend
14 his Complaint once as a matter of course under Fed. R. Civ. Pro. 15(a)(1)(B). Albeit Plaintiff filed
15 his First Amended Complaint on October 18, 2016, one day after the deadline expired, Plaintiff did
16 not obtain written consent from Defendants or leave of Court before he filed it.

17 Plaintiff's First Amended Complaint alleges the same causes of action as Plaintiff's
18 Complaint. Upon review of the two pleadings, the Court finds that Plaintiff's First Amended
19 Complaint and Complaint are substantially similar. The Court therefore grants Defendants' Motion
20 to Strike Plaintiff's Verified First Amended Complaint as redundant. Accordingly,

21 **IT IS HEREBY ORDERED** that Defendants' Motion to Strike Plaintiff's Verified First
22 Amended Complaint (ECF No. 16) is **granted**.

23 DATED this 12th day of December, 2016

24
25 
GEORGE FOLEY, JR.
26 United States Magistrate Judge
27
28